IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.01.2008

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.A. NOS. 757 & 758 OF 2007
AND
M.P. NOS. 1 & 2 OF 2007

B.Purushothaman (Died)

1. P.Indhurani
1-A. Pratheep Kumar (Minor)
rep. By his mother & natural
guardian, P.Indhurani .. Appellants in both appeals
(Appellants 1 & 1-A substituted
in place of deceased sole appellant
vide order dated 24.7.07 in M.P.
Nos. 2 & 3 of 2007)

- Vs -

1. K.Chandran

2. The Inspector General of Registration
Santhome High Road
Chennai 28.

3. The Joint Sub-Registrar-I
Sub Registrar Office
Saidapet
Chennai 15.

4. The Tahsildar
Saidapet Taluk Office
Saidapet, Chennai 15. .. Respondents in both appeals
Writ appeals filed against the order dated 18th April, 2007 passed by the learned single Judge in W.P. Nos.49292 and 49293 of 2006.
For Appellants : Mr. AR.L.Sundaresan, SC, for
M/s. AL.Gandhimathi

For Respondents : Mr. T.R.Rajaraman for R-1
Mr. S.Gopinath, AGP for RR-2 to 4
COMMON JUDGMENT
(JUDGMENT OF THE COURT WAS DELIVERED BY
S.J.MUKHOPADHAYA, J.)

As both the appeals have been preferred against common order dated 18th April, 207, passed in W.P. Nos.49292 and 49293 of 2003 and common question of law is involved, they are heard together and disposed of by this common judgment.

2. In regard to two properties, both in Bloc No.1, T.S. No.118 (Old survey No.256) in Ekkattuthangal Village to the extent of 7676 sq.ft. and 7752 sq.ft., respectively, two sale deeds were executed in favour of the contesting respondents/writ petitioners, both registered on 6th May, 1985 by document No.1303 and 1305 of 1985. The appellant, who was the 4th respondent in the writ petition, along with others, after about 21 years, filed two separate deeds for cancellation of those deeds registered in 1985 and they were provided with document Nos.8248 and 8249 of 206, both dated 3rd Nov., 2006. Having come to know, the respondents/writ petitioners, represented before the 3rd respondent, Joint Sub-Registrar, Saidapet, Chennai, to de-register document Nos.8248 and 8249/06, both dated 3rd Nov., 2006. Having received no reply, the writ petitions were preferred, wherein, learned single Judge passed the following common order on 18th April, 2007, as extracted below :-

"The writ petition is for an issuance of a writ of mandamus directing the second respondent to de-register document No.8249 of 2006 dated 03.11.2006.
2. The grievance of the petitioner is that the second respondent inspite of legal notice dated 21.11.2006, has neither de-registered the said document nor passed any orders on his request.
In view of the said circumstances, without expressing any opinion about the merits of the matter in issue, it is suffice to direct the petitioner to give a representation to the second respondent seeking to de-register the document No.8249 of 2006 dated 3.11.2006 within a period of two weeks from this date and thereafter the second respondent has to consider the case of the petitioner and pass appropriate orders on merits in accordance with law. The second respondent is directed to hear the petitioner before passing the orders.
With this above direction, the writ petition is disposed of. However, there will be no order as to costs."

3. Counsel for the appellant submitted that the 3rd respondent, Joint Sub-Registrar, has no jurisdiction to de-register a deed already registered and there was no occasion for learned single Judge to remit the case to the 3rd respondent for deciding the representation. According to him, document Nos.8248 and 8249 of 2006 dated 3rd Nov., 2006, are registered documents showing cancellation of the earlier deeds dated 6th May, 1985, and legally it cannot be termed to be a document de-registering an earlier document.
On the other hand, according to counsel for the respondents/writ petitioners, the Joint Sub-Registrar, if registered a document, which amounts to de-registration of earlier registered documents, has jurisdiction to recall his order, if found without jurisdiction.
Learned counsel appearing on behalf of the State also accepted that the Joint Sub-Registrar has no jurisdiction to de-register a document already registered.

4. We have heard the parties and noticed the rival contentions.

5. In view of the stand taken by the parties, we feel that the following issues are required to be determined :-
i) Whether a document, which has already been registered, stand cancelled if a subsequent document is registered cancelling the earlier registered document.
ii) If the answer is in affirmative, then the question will be, whether the Joint Sub-Registrar has jurisdiction to register a cancellation deed, which may amount to de-registration of the earlier deed.

6. So far as the present case is concerned, as none of the registered documents are before us, nor any of such registered deed is under challenge, we are not supposed to answer the aforesaid issues. Such issues can be determined either by a Court of competent jurisdiction or by the authority having

such jurisdiction.

7. So far as the 3rd respondent, Joint Sub-Registrar, Saidapet, Chennai, is concerned, at best he can determine whether he has jurisdiction to register such document and on hearing the parties if he comes to a conclusion that he has no such jurisdiction, may pass any order in accordance with law. In this background, we are of the view that learned single Judge, instead of remitting the matter for determination of the representation, should have asked the Joint Sub-Registrar, Saidapet, Chennai to decide the aforesaid question.

8. We, accordingly, allow the parties to move before the 3rd respondent, Joint Sub-Registrar No.1, Saidapet, Chennai 15, who after hearing the parties will decide the question whether he has jurisdiction to register such document and communicate the decision to the parties, preferably within a period of two months from the date of receipt/production of a copy of this order. On such decision, it will be open to the aggrieved persons to seek for appropriate relief from a court of competent jurisdiction, including a competent civil court for appropriate relief. The order passed by learned single Judge dated 18th April, 2007, stands modified to the extent above. Both the writ appeals stand disposed of. Consequently, connected miscellaneous petitions are closed. But there shall be no order as to costs.

(S.J.M.J.) (M.V.J.)
09.01.2008
Index : Yes
Internet : Yes
GLN
S.J. MUKHOPADHAYA, J.
AND
M.VENUGOPAL, J.

GLN
To
1. The Inspector General of Registration
Santhome High Road
Chennai 28.

2. The Joint Sub-Registrar-I
Sub Registrar Office
Saidapet, Chennai 15.

3. The Tahsildar
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